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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

14 WESTERN WATERSHEDS PROJECT, *et*
15 *al.*,

16 Plaintiffs,

17 v.

18 UNITED STATES FOREST SERVICE,

19 Defendants.

Case No. 08-CV-1460 PJH

CALIFORNIA CATTLEMEN'S
ASSOCIATION'S NOTICE OF MOTION
AND MOTION FOR LEAVE TO
INTERVENE; MEMORANDUM OF POINTS
AND AUTHORITIES

[Filed concurrently with:

1. [Proposed] Answer in Intervention
2. Declaration of Justin Oldfield;
3. [Proposed] Order.

Date: July 23, 2008

Time: 9:00 a.m.

Judge: Honorable Phyllis J. Hamilton

Courtroom: 3

First Amended Complaint filed: May 30, 2008

24 CALIFORNIA CATTLEMEN'S
25 ASSOCIATION,

26 Intervenor.

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NOTICE OF MOTION

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that the California Cattlemen's Association ("CCA"), hereby applies to the above-entitled Court for leave to intervene herein as a separate intervenor-defendant as a matter of right pursuant to Federal Rule of Civil Procedure Rule 24(a)(2) and, alternatively, as a matter of permission under Federal Rule of Civil Procedure Rule 24(b). This motion is made based on the Memorandum of Points and Authorities in Support of Motion for Leave to Intervene, the declaration of Justin Oldfield in Support of Motion for Leave to Intervene, the pleadings and papers on file in this case, the accompanying [Proposed] Answer and Affirmative Defenses, and any oral arguments which the court entertains on this matter.

Dated: June 11, 2008

BEST BEST & KRIEGER LLP

By: /s/ William J. Thomas, Jr.

William J. Thomas, Jr.
Heather C. Baugh
Anthony J. Van Ruiten
Attorneys for Intervenor
California Cattlemen's Association

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

California Cattlemen's Association ("CCA") requests leave to intervene in this action as a defendant. CCA represents the California cattle industry which has the most significant private economic interest jeopardized by the issues in this litigation, and is frequently granted the right to intervene into cases that threaten grazing rights. The California cattle industry produces over \$1.58 billion to the State's \$25 billion dollar agricultural economy, making beef the fifth leading agricultural commodity in the state. (See Declaration of Justin Oldfield in Support of Motion by California Cattlemen's Association for Leave to Intervene at ¶ 4. ["Oldfield Decl."].)

The United States Forest Service ("USFS") is directed by authorizing statutes to manage national forests for multiple uses and benefits and for the sustained yield of renewable resources including water, forage, wildlife and wood. See the Multiple-Use Sustained Yield Act of 1960 (16 U.S.C. §§ 528-531); the National Forest Management Act (16 U.S.C. §§ 1600, *et seq*); the Public Rangelands Improvement Act of 1978 (43 U.S.C. §§ 1901-1908); and the National Environmental Policy Act of 1969 ("NEPA") (42 U.S.C. §§ 4321-4347). As such, the USFS issues permits to cattle producers to graze their cattle on national forests under certain constraints. Most USFS grazing permits are for summer use which seasonally coordinates with a rancher's use of his/her home or base property for the "off season" (usually fall, winter and spring). As a result of the coordinated use of USFS grazing permits with their overall operations, cattlemen rely on USFS grazing permits to maintain their livestock, provide grazing relief to their home ranch ecosystems, earn a living, support their families, and in turn, support their communities.

Since 1995, Congress has been in the process of balancing the need for environmental review against the need for permits that are timely processed and fairly executed and issued. See, Rescissions Act of 1995 Pub. L. 104-19. The 1995 Rescissions Act required the USFS to establish a schedule for NEPA, and re-issue grazing permits pending NEPA compliance.

1 In 2004, Congress passed an Appropriations Rider with similar language as the 1995
 2 Rescission Act in an effort to allow the USFS to complete NEPA review on an internal schedule,
 3 thereby eliminating the 1995 schedule which was deemed largely unworkable because of the
 4 strict timing requirements. See, H.R. 1944 [104th]: Emergency Supplemental Appropriations for
 5 Additional Disaster Assistance, for Anti-terrorism Initiatives, for Assistance in the Recovery
 6 From the Tragedy That Occurred At Oklahoma City, And Making Rescissions For The Fiscal
 7 year Ending September 30, 1995, and for Other Purposes, 2004 Sec. 325, Pub. Law. 104-19.

8 In 2005, Congress passed another Appropriations Rider that allowed the USFS to
 9 categorically exclude a limited number of grazing reauthorizations in the fiscal years 2005-2007
 10 from NEPA's Environmental Impact Statement ("EIS") and/or an Environmental Assessment
 11 ("EA") requirements, provided certain conditions were met. This modified environmental review
 12 process was codified in H.R. 4818 [108th]: Consolidated Appropriations Act, 2005, Sec. 339, Pub.
 13 Law. 108-447. Congress has recently extended the rider for fiscal year 2008. See H.R. 2764
 14 [110th]: Consolidated Appropriations Act, 2008, Sec. 339, Pub. Law. 110-161. Accordingly, the
 15 USFS proceeded to adopt categorical exemptions ("CEs") for various allotments throughout the
 16 State of California and in other Western states, exempting reissued grazing permits from full
 17 NEPA review, and allowing the continued issuance of grazing permits to various ranchers.
 18 Plaintiffs challenge the CE decisions involving 47 separate allotments within nine (9) forests
 19 located in California (collectively "Subject Allotments"). Plaintiffs have just recently amended
 20 and expanded the complaint challenging 138 of USFS's decisions involving twenty five (25) U.S.
 21 forests including the nine forests in California which were the focus of the original Complaint.

22 Many of CCA's members are permitted to graze on the Subject Allotments which are
 23 challenged in this case ("Permittees"). Oldfield Decl. ¶ 7. Permittees have relied on USFS's
 24 determination that reauthorized grazing practices fall within the CEs, and are therefore exempted
 25 from full NEPA review. Any remedy imposed by this Court that invalidates the USFS's adoption
 26 of the CEs, thereby potentially invalidating the permits issued to the Permittees absent more
 27 intensive NEPA review, would have a substantial, detrimental effect on the ability of Permittees
 28 to graze their livestock and would result in serious environmental impacts to ranchers' home

properties as these properties would have to absorb the displaced cattle. If the Court were to grant the Plaintiffs' prayer for relief, it could effectively revoke the permits granted, forcing some of the Permittees out of the business, and others to severely reduce their operations. Consequently, any decision to invalidate the CEs adopted by the USFS on the Subject Allotments, would directly detrimentally impact the Permittees. The potentially chilling effect which this lawsuit may have on the USFS's decision to engage future environmental review may also impact other ranchers who need permits that would not otherwise be provided because of the Forest Service's apprehension of certifying any NEPA review.

II. BACKGROUND

A. PROPOSED INTERVENOR CCA

Proposed Intervenor CCA is a California trade association representing over 2,100 members in all facets of the livestock and cattle industry. Oldfield Decl. ¶ 4. Many of these members utilize forage on United States Forest Service ("USFS") lands to sustain their livestock. *Id.* at ¶ 7. Cattlemen rely on USFS grazing permits to maintain their livestock, provide grazing relief to their home ranch ecosystems, earn a living, support their families, and in turn, support their communities. Any restriction on permitted grazing on national forests would inevitably impact not only base ranches and grazing operations, but the entire California cattle industry. *Id.* at ¶ 8. Accordingly, CCA members have a substantial stake in the planning and management of grazing programs throughout the National Forest System.

B. THE HISTORY OF GRAZING PERMITS

Ranchers have historically utilized forage on USFS lands to sustain their livestock. USFS allows ranchers to obtain permits to graze on federal forests. The livestock industry is heavily reliant upon grazing on public lands. The American public has utilized these public lands for

1 grazing for over 200 years and the United States government has statutorily authorized livestock
2 grazing on public lands for decades. Congress has historically embraced grazing as one of the
3 principle multiple uses of forest lands and has structured the grazing statutes to harmonize
4 grazing with environmental protection. See 16 U.S.C. § 1600, *et seq.*; 43 U.S.C. §§ 1901-1908.
5 Ranchers have therefore historically relied on these grazing permits that the USFS administers.

6 Absent the statutory “CE” exemption, the re-issuance of grazing permits is subject to full
7 NEPA review which the Forest Service has had difficulty completing under the Rescission Act
8 schedules. *Idaho Watersheds Project v. Hahn*, 307 F.3d 815 (9th Cir. 2002). Since 1995,
9 Congress has been in the process of balancing the need for environmental review against the need
10 for grazing permits that are timely processed and fairly executed and issued. See, Rescissions Act
11 of 1995 Pub. L. 104-19. The 1995 Rescissions Act required the USFS to establish and adhere to a
12 schedule for NEPA, and re-issue grazing permits pending NEPA compliance.

13 In 2004, Congress passed an Appropriations Rider with similar language as the 1995
14 Rescission Act in an effort to allow the USFS to complete NEPA review on an internal schedule,
15 thereby eliminating the 1995 schedule which was largely unworkable because of the strict timing
16 requirements. See, 2004 Appropriations Rider, Section 325, Pub. L. 104-19.

17 In 2005, Congress passed an Appropriations Rider that allowed the USFS to categorically
18 exclude grazing reauthorizations in the fiscal years 2005-2007 from NEPA’s Environmental
19 Impact Statement (“EIS”) and/or an Environmental Assessment (“EA”) requirements, provided
20 certain conditions were met. These conditions assured that certain permits could be issued
21 without the risk of unreasonable environmental consequence. See, 2005 Appropriations Rider,
22 Section 339, Pub. L. 108-447. Congress has recently extended the rider for fiscal year 2008. See
23 2008 Appropriations Rider, Section 339, Pub. L. 110-161.

24 The drafters of the 2005 Appropriation Rider intended to expedite the permit process by
25 excluding certain and limited allotments from NEPA review, as such full review over thousands
26 of permits would be untimely and prohibitively expensive, and these CE authorized re-issuance of
27 permits would not alter the status quo or significantly impact the environment. Since grazing is
28 time-sensitive and full review of environmental analysis should be concentrated on more sensitive

allotments, this was a practical compromise on the part of Congress which recognized both the needs of ranchers and the environmental needs of the forests they utilize.

Plaintiffs now take issue with how USFS applied the criteria for the CEs to the Subject Allotments. Plaintiffs claim that the CEs were not applicable to 47 allotments in nine (9) forests in California and are now amending the complaint to challenge 138 decisions affecting 25 forests across the West on 386 separate allotments. *See*, Complaint for Violations of the Fiscal Year 2005 Consolidated Appropriations Act, the National Environmental Policy Act, and the Appeals Reform Act at 2:2-3. Consequently, Plaintiffs request, among other things, that USFS's decisions on 25 forests to re-issue grazing permits be set aside, and that the USFS be permanently enjoined from proceeding to reauthorize grazing under the terms of the rider unless it affirmatively establishes full compliance with NEPA. Because the Plaintiffs request that full NEPA review be performed on each of the Subject Allotments they are directly countering the Congressional action to expedite this review..

III. STANDING OF CCA

A. CCA HAS STANDING BECAUSE CCA'S MEMBERS HAVE SUBSTANTIAL PROPERTY INTERESTS THAT ARE IMPACTED BY THIS LITIGATION

CCA has standing because its members have pecuniary interests that are implicated by the remedy sought in this litigation. The Ninth Circuit has stated that constitutional standing is implicitly addressed by imposing a requirement that the proposed intervenor assert an interest relating to the property or transaction which is the subject to the action. *Southwest Center for Biological Diversity v. Berg* 268 F.3d 810, 822 (9th Cir. 2001). The view that standing is implicit in an action that directly affects a party is also supported by the Federal Rules of Civil Procedure. *See infra* FRCP 24(a)(2).

1 In this case, CCA has an immediate interest that will be impacted through this litigation
2 because its members have both property rights and pecuniary interests that could potentially be
3 jeopardized by the Court's final ruling in this case. CCA's members have grazing rights as a
4 result of the permits re-issued to them by the USFS, and at issue in this case. A decision
5 invalidating the application of any of the CEs could lead to revocation of these permits, and
6 therefore a loss of their rights to use and enjoy the Subject Allotments for grazing.

7 Similarly, CCA's members have a pecuniary interest subject to the remedies sought in this
8 case because if any of the CEs are deemed invalid and CCA's members are not allowed to graze
9 cattle on Forest Service land covered under the subject allotments, they will be forced to keep
10 their cattle on private land which is generally unavailable or already stocked. Alternatively, they
11 will have to abandon their operations for lack of grazing capability, move their cattle to a feedlot
12 operation, or reduce the size of their herd – all of which will come at considerable cost and
13 hardship and are generally impractical. Ironically, shifting this public grazing back on private
14 ranch grazing will have more of an impact on important habitat and listed and sensitive species
15 because those lower elevation lands are home to more valuable habitat and more species than the
16 forest lands.

17 18 IV. ARGUMENT

19 20 A. CCA IS ENTITLED TO INTERVENTION AS A MATTER OF RIGHT 21 UNDER FEDERAL RULE OF CIVIL PROCEDURE 24(A)

22
23 The CCA is entitled to intervention as a matter of right under Federal Rule of Civil
24 Procedure 24(a)(2). Rule 24 provides:

25 Intervention of Right. Upon timely motion, the court must permit
26 anyone to intervene who: ... (2) claims an interest relating to the
27 property or transaction that is the subject of the action, and is so
28 situated that disposing of the action may as a practical matter impair
or impede the movant's ability to protect its interest, unless existing
parties adequately represent that interest. Fed.R.Civ.P. 24(a)(2).

Courts traditionally construe Rule 24 liberally. *Arakaki v. Cayetano*, 324 F.3d 1078, 1083 (9th Cir. 2003); *Donnelly v. Glickman*, 159 F.3d 405, 409 (9th Cir. 1998). Courts are guided primarily by practical and equitable considerations. *Id.*

The courts have broken down the requirements of Rule 24(a)(2) into four elements:

(1) the application must be timely; (2) the applicant must have a 'significantly protectable' interest relating to the transaction that is the subject of the litigation; (3) the applicant must be so situated that the disposition of the action may, as a practical matter, impair or impede the applicant's ability to protect its interest; and (4) the applicant's interest must be inadequately represented by the parties before the court.

League of United Latin Am. Citizens v. Wilson, 131 F.3d 1297, 1302 (9th Cir. 1997) (citing *Northwest Forest Res. Council v. Glickman*, 82 F.3d 825, 836 (9th Cir. 1996)). A non-party must demonstrate each element in order to successfully intervene. The four-part test governing intervention is "interpreted broadly in favor of intervention." *Cabazon Board of Mission Indians v. Wilson*, 124 F.3d 1050, 1061 (9th Cir. 1997).

For the reasons set forth below, the CCA satisfies the requirements of Federal Rule of Civil Procedure 24(a)(2) to intervene as a matter of right in the present action.

(1) CCA'S MOTION TO INTERVENE IS TIMELY

As a preliminary matter, the CCA's motion for leave to intervene is timely and will not prejudice any of the parties already involved in this lawsuit. Timeliness is not just a function of counting days; it is determined by the totality of the circumstances. *NAACP v. New York*, 413 U.S. 345, 366 (1973) [overruled on other grounds]. In determining whether a motion for intervention is timely, the Court should consider the following factors: "(1) the stage of the proceeding at which an applicant seeks to intervene; (2) the prejudice to other parties; and (3) the reason for and length of the delay." *League of the United Latin Am. Citizens*, 131 F.3d at 1302. Delay is measured from the date the proposed intervenor should have been aware that its interests would no longer be protected adequately by the parties, not the date it learned of the litigation.

1 *Officers for Justice v. Civil Serv. Comm'n of San Francisco*, 934 F.2d 1092, 1095 (9th Cir. 1991).

2 Upon learning that the rights of its membership will be impacted should the Plaintiffs
3 prevail, the CCA took immediate action to intervene in this suit. The present application is being
4 filed: (a) within 13 weeks of the initial complaint, and (b) less than two weeks after the filing date
5 of the first amended complaint, May 30, 2008, and therefore in the beginning stages, (c) before
6 any status conference has been held, (d) before any Temporary Restraining Order/Preliminary
7 Injunction hearing, (e) before an answer has been filed, (f) before any settlement discussions, and
8 (g) before the Court has made any substantive rulings. *See Northwest Forest Res. Council*, 82
9 F.3d at 837, (intervention motion timely when filed before an answer is filed and "before the
10 district court had made any substantive rulings"). There will be no prejudice to any of the parties
11 by allowing CCA to intervene, as it will not impede any results already achieved or delay this
12 process. Accordingly, the Court should find CCA is timely.

13
14 (2) THE CCA HAS A SIGNIFICANTLY PROTECTABLE
15 INTEREST IN THE SUBJECT MATTER OF THE
16 REGULATIONS AT ISSUE

17 Through the members it represents, the CCA can claim "an interest relating to the
18 property or transaction which is the subject of the action," and therefore can establish it has a
19 significantly protectable interest. An applicant demonstrates a "significantly protectable interest"
20 when the "injunctive relief sought by plaintiffs will have direct, immediate, and harmful effects
21 upon a third party's legally protectable interests." *Forest Conservation Council v. United States*
22 *Forest Serv.*, 66 F.3d 1489, 1494 (9th Cir. 1995). "Whether an applicant for intervention
23 demonstrates sufficient interest in an action is a practical, threshold inquiry. No specific legal or
24 equitable interest need be established." *Greene v. United States*, 996 F.2d 973, 976 (9th Cir.
25 1993) (citing *Portland Audubon Society v. Hodel*, 866 F.2d 302, 308 (9th Cir. 1989)). "It is
26 generally enough that the interest [asserted] is protectable under some law, and that there is a
27 relationship between the legally protected interest and the claims at issue." *Sierra Club v. United*
28 *States EPA*, 995 F.2d 1478, 1484 (9th Cir. 1993).

1 The CCA represents members with grazing interests that could be lost as a result of the
 2 adjudication of this suit. The interests of the Permittess on the Subject Allotments constitutes the
 3 most significant private economic interests involved in this litigation. Nearly 40% of all cattle
 4 raised in the West spend some of their lives on public land allotments. Oldfield Decl. ¶ 8.
 5 Grazing on USFS land is critical to the functioning of the livestock industry in the west. (*Ibid.*)
 6 Therefore, the CCA and its members have a significantly protectable interest in the application of
 7 the criteria of the CE to the Subject permits, and would be detrimentally impacted by the remedy
 8 sought by Plaintiff in this action. If the current permits are revoked pending new and time
 9 consuming analysis, ranchers relying on them will loose their livelihood. Further, future ranchers
 10 needing re-issuance of their permits may be constrained as an adverse ruling in this lawsuit could
 11 effectively chill the USFS from timely completing NEPA review in the future. In this instance,
 12 pursuant to the Appropriations Rider, Congress intended to streamline NEPA review on land
 13 where grazing is not imposing a foreseeable environmental threat. Accordingly, CCA has a direct
 14 interest in this suit, as the effects of an adverse ruling will directly harm ranchers immediately.

15
 16 B. CCA'S INTERESTS WOULD BE SUBSTANTIALLY PREJUDICED BY
 17 ANY JUDGMENT RENDERED IN ITS ABSENCE
 18

19 To intervene, an applicant must be so situated that the disposition of the action may, as a
 20 practical matter, impair or impede that person's interest, unless that person's interest is adequately
 21 represented by existing parties. Fed.R.Civ.Proc. 24(a)(2).

22 The CCA's interest in the subject matter of this action is different and distinct from the
 23 that of the USFS. In fact, it is akin to that of a real party in interest, as the ultimate effect of
 24 revoking the permits issued by USFS will be to harm ranchers and preclude them from earning a
 25 living as they have earned it in the past. The CCA and its members have completely independent
 26 business and property interests than that of USFS. Livestock operators depend on public lands
 27 for their economic livelihood. Any remedy that impacts permit grazing would directly impact the
 28 use of public allotments, therefore creating greater use of private ranches. The changes would

1 therefore have a substantial economic impact on not only livestockpersons, but their families and
2 their rural communities as well.

3 Because the CCA is uniquely qualified to inform the Court about grazing on USFS lands,
4 and because no other party to this case can adequately protect the specific interest of the CCA and
5 its members, the CCA is entitled as a matter of right to intervene as a Defendant in this action to
6 refute Plaintiffs' claims. The CCA has an established, independent interest relating to the issues
7 which are the subject of this action, and the disposition of this action will, as a practical matter,
8 impair or impede its ability to protect that interest. Consequently, this Court should permit it to
9 intervene.

10
11 C. CCA'S INTEREST IS NOT ADEQUATELY REPRESENTED BY THE
12 EXISTING PARTIES
13

14 CCA is not adequately represented by the USFS. An applicant must also demonstrate that
15 existing parties do not adequately protect its interest. *Donnelly*, 159 F.3d at 409. The applicant's
16 burden is minimal and is satisfied so long as the applicant shows that representation by existing
17 parties "may be" inadequate. *Trbovich v. United Mine Worker of Americas*, 404 U.S. 528, 538
18 n.10 (1972).

19 Three factors determine the adequacy of representation: (1) whether the present party will
20 undoubtedly make all of a proposed intervenor's arguments; (2) whether the present party is
21 capable and willing to make such arguments; and, (3) whether a proposed intervenor would offer
22 any necessary elements to the proceeding that other parties would neglect. *California v. Tahoe*
23 *Reg'l Planning Agency*, 792 F.2d 775, 778 (9th Cir. 1986).

24 The most important factor in determining the adequacy of representation is how the
25 applicant's interest compares with the interest of existing parties. *Arakaki*, 324 F.3d at 1086.
26 When an applicant for intervention and an existing party have the same ultimate objective, a
27 presumption of adequacy of representation arises. *Id.*; *League of United Latin Am. Citizens*, 131
28 F.3d at 1305.

Here, the CCA's interest is unique from the parties presently before the Court. CCA represents the sole interest of the livestock industry and rural communities. Conversely, USFS represents the broad interests of the general public. The CCA would offer relevant facts, arguments, evaluations, solutions and other elements to the proceeding that existing parties to the case would not advance. Likewise, USFS represents a neutral position as a steward of the public range lands. USFS's interest is not to promote any single entity's use of those lands (such as grazing), but to represent the general public.

Additionally, USFS will focus its arguments on matters of administrative convenience and perhaps political considerations. Because CCA only has an interest in saving the grazing elements of the regulations, it would focus on arguments and may accept judgments that allow the important grazing elements to survive. The USFS may not accept such a judgment based on administrative or political considerations. Overall, neither the Plaintiffs nor Defendant adequately represents the narrow interest of the CCA.

V. EVEN IF THE CCA IS NOT ENTITLED TO INTERVENE AS A MATTER OF LAW, THE COURT SHOULD PERMIT ITS INTERVENTION

Even if CCA is not entitled to intervene as a matter of law, the Court should permit its intervention in this matter. Federal Rule of Civil Procedure 24(b)(2) allows for permissive intervention, upon timely application anyone may be permitted to intervene in an action when an applicant's claim or defense and the main action have a question of law or fact in common. Fed.R.Civ.Proc. 24(b)(2). In exercising its discretion, the Court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

A court may grant permissive intervention where the applicant for intervention shows: "(1) independent grounds for jurisdiction; (2) the motion is timely; and (3) the applicant's claim or defense, and the main action, have a question of law or a question of fact in common."

Northwest Forest Res. Council v. Glickman, 82 F.3d 825, 839 (9th Cir. 1996). The CCA meets all of these requirements. The Court has an independent basis for jurisdiction over the CCA's

claims as CCA's claims arise from the same federal question which is the issue in this matter. See 5 U.S.C. § 702; *Blue v. Widnall* 162 F.3d 541, 545 (9th Cir. 1998).

Moreover, as discussed above, this motion is timely in the proceedings in this action. Additionally, the CCA has a substantial and immediate interest in the common law and facts of this litigation. The impact of any judgment in this action will affect the CCA in a manner distinct from any other party to this action.

Last, allowing the CCA to intervene will not enlarge the issues involved in this case. The CCA only seeks to oppose Plaintiffs' claims and will not raise additional issues not implicated in the current litigation. In fact, CCA and Permittees' knowledge of the extensive facts raised by Plaintiffs may give rise to possible settlement of some of the key issues. Therefore, allowing the permissive intervention of the CCA would be consistent with Federal Rule of Civil Procedure 24 (b)(2).

VI. INTERVENTION BY THE CCA IS NOT PROHIBITED BY LAW

CCA may defend its interests alongside the USFS, and is likely in a better position to provide the Court with the factual evidence and analysis that only members who utilize these Subject Allotments would have at their disposal. Plaintiffs allege USFS violated FY 2005 Consolidated Appropriation Act, Sec. 339 (Pub. L. 108-447), the Appeals Reform Act (Pub. L. 102-381, Sec. 322 (codified at 16 U.S.C. § 1612, *et seq.*) and the Administrative Procedure Act (5 U.S.C. 706(2).) None of these Acts, however, prohibit private parties like the CCA from defending private interests.

Since the case in chief does not involve the application of NEPA to the decisions made by the USFS regarding grazing permit re-issuance, but rather the factual application of the CE's exemption criteria to the Subject Allotments, the CCA is not prevented from protecting its interest in this action as a defendant during the early and factual phases of this litigation. Generally, private defendants are only permitted to intervene in *NEPA actions* during the remedial phase of a case, where the contractual rights of the party are affected by the proposed remedy. *National*

1 *Parks & Conservation Ass'n v. Babbitt*, 241 F.3d 722, 738 (9th Cir. 2001).

2 Here, however, before the court can determine if NEPA applies to this case, the court
3 must determine if the CEs were improperly applied to the Subject Allotments by USFS. In fact,
4 Plaintiffs first cause of action deals with the CEs application as a wholly independent cause from
5 that dealing with NEPA. It is possible the Court will never reach the NEPA issues prayed for as
6 "remedies" by Plaintiffs, as the case in chief does not deal with violations of NEPA, but rather
7 with violations of the CEs criteria. As a threshold matter, the Court must determine the CE issue
8 before it ever deals with the adequacy of the NEPA review performed by USFS on the Subject
9 Allotments. Therefore, this is not solely a NEPA action, and nothing prevents the CCA from
10 intervening in the early stages of the litigation.

11 Regardless, even if the court were to determine NEPA plays a role in the remedial stages
12 of this action, CCA would still be entitled to intervene as its members' contractual rights which
13 will be impacted if NEPA review is required on the Subject Allotments. NEPA review is time
14 intensive and generally comes at significant cost, for which the USFS has traditionally not been
15 adequately provided with in its budget. An expansive NEPA review could result in USFS
16 determining that permit re-issuance is an operational impossibility. Accordingly, if full NEPA
17 review is required during the remedial stages, CCA's members' interests are adequate enough to
18 justify its intervention as their contractual and property rights are at stake. Moreover, CCA is a
19 proper defendant and is not prevented from intervening in this action by the Appeals Reform Act
20 ("ARA").

21 Plaintiffs allege the USFS violated the ARA by declaring that the public could not
22 administratively appeal CE decisions of the subject allotments. (First Am. Compl. ¶ 259.) The
23 ARA does not contain a provision prohibiting a private party defendant. (Pub. L. No. 102-381, §
24 322 (codified at 16 U.S.C. § 1612 note) Accordingly, to the extent this case deals with the ARA,
25 and not NEPA, CCA is a proper defendant.

1 The first and primary cause of action pled by Plaintiffs exclusively targeted the
2 Appropriations Rider – not NEPA.

3 Finally, the CCA is a proper defendant and is not prevented from intervening in this action
4 by the Administrative Procedure Act (“APA”). Plaintiffs allege the USFS violated APA by
5 applying the CEs to the Subject Allotments by failing to properly apply the CEs. The APA does
6 not contain a provision prohibiting a private party defendant. (5 U.S.C. § 701 *et seq.*)

7 Because the CCA’s members have pecuniary interests in the outcome of this litigation,
8 and is not prohibited by law or other jurisdictional constraint from defending this lawsuit, its
9 intervention should be permitted.¹ Really, this entire complaint is based on factual, on the
10 ground, application of permit issuance and evaluation of environmental consequences which may
11 be at issue as a result of ongoing grazing on these allotments. This simply does not resemble a
12 challenge to a NEPA project evaluation. The ranchers are the best parties to provide the court
13 with the facts that are needed to assess and review the USFS’s application of the criteria for the
14 application of CEs (i.e., grazing history, condition of the range and impact on special species).
15 Therefore, CCA should not only be allowed to intervene as a matter of right, it will significantly
16 benefit the Court to have the insight of the very ranchers who are likely to experience the impact
17 of any remedy granted.

18 19 VII. CONCLUSION

20
21 The USFS does not own livestock subject to the CEs and permits, but rather applies the
22 terms of the Appropriation Act Rider CEs to the Subject Allotments when issuing grazing permits
23 as the Nation’s steward of the public forest lands. Consequently, the CCA will be most directly
24 affected by any adverse decision in this case. Therefore, for the reasons stated above, the CCA

25 ¹ CCA was granted intervention in the Sierra Framework Case which dealt with, among
26 other things, NEPA challenges to USFS regulatory decisions regarding grazing. *People of the
State of California v. United States Department of Agriculture, et al.*, Case No. CIV-S-05-0205.

27 Similarly, PLC, the national equivalent to CCA, was also granted intervention in the BLM
28 case, which dealt with grazing regulations and NEPA as well. *Western Watersheds Project v.
Kraayenbrink et. al.*, Case No. CV 05-2987- E- BLW (Idaho District Court, June 8, 2007.) This
firm represented the grazing interests in each of these cases.

1 respectfully requests the Court to grant leave to intervene in this action and enter an order that its
2 Proposed Answer in Intervention, concurrently submitted herewith, be deemed filed with the
3 Court.

4
5 Dated: June 11, 2008

BEST BEST & KRIEGER LLP

6
7 By: /s/ William J. Thomas, Jr.

8 William J. Thomas, Jr.

9 Heather C. Baugh

10 Anthony J. Van Ruiten

11 Attorneys for Intervenor

12 California Cattlemen's Association

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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

14 WESTERN WATERSHEDS PROJECT, *et*
15 *al.*,

16 Plaintiffs,

17 v.

18 UNITED STATES FOREST SERVICE,

19 Defendants.

20
21
22
23
24 CALIFORNIA CATTLEMEN'S
25 ASSOCIATION,

26 Intervenor.
27
28

Case No. 08-CV-1460 PJH

DECLARATION OF JUSTIN OLDFIELD IN
SUPPORT OF CALIFORNIA
CATTLEMEN'S ASSOCIATION'S MOTION
FOR LEAVE TO INTERVENE

[Filed concurrently with:

1. Notice of Motion and Motion to Intervene;
2. [Proposed] Answer in Intervention;
3. [Proposed] Order.]

Date: July 23, 2008

Time: 9:00 a.m.

Ctrm: 3

Judge: Honorable Judge Phyllis J. Hamilton

Complaint filed: March 14, 2008

DECLARATION OF JUSTIN OLDFIELD

I, Justin Oldfield, declare as follows:

1. I have personal knowledge of the matters stated in this declaration. I could and would competently testify to the following facts if called upon to do so.

2. I am the Director of Industry Affairs of the California Cattlemen's Association (the "CCA"). I am the chief staff liaison between the CCA and the United States Forest Service ("USFS") and frequently engage with the USFS to coordinate on matters of the National Environmental Protection Act ("NEPA") and the Endangered Species Act ("ESA") as these Acts relate to grazing and grazing permit issues. I am also the chief coordinator between the CCA and the California Public Lands Council ("CPLC").

3. In my capacity as Director of Industry Affairs, I work to ensure that ranchers understand regulatory processes so that their operations remain in compliance with State and Federal environmental and public lands policies

4. The CCA was formed in 1917, and is a California non-profit trade association representing over 2,100 members in all facets of the livestock industry. According to CCA's most recent information, in 2002, the California cattle industry produced over \$1.58 billion of the state's \$25 billion dollar agricultural economy; making beef the 5th leading agricultural commodity in the state.

5. The CCA routinely represents California's ranchers and beef producers in legislative and regulatory affairs. The CCA actively seeks to promote the interests of ranchers who graze their cattle on national lands. The CCA funds education and outreach efforts, litigation and research to support California's beef cattle industry, and maintains a political action committee to support those candidates favorable to family ranchers and beef producers.

6. The CCA has 38 county cattlemen's association affiliates that serve as a strong link between the grassroots membership and CCA.

7. Many of CCA's members utilize forage on United States Forest Service

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1 ("USFS") lands to sustain their livestock. The CCA represents most all of the permittees
2 impacted by the issues involved in this litigation.

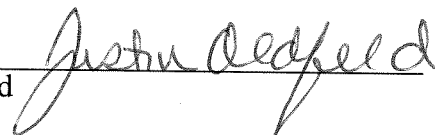
3 8. Nearly 40% of all cattle raised in the west spend some of their lives on public
4 land allotments. Grazing on USFS land is critical to the functioning of the livestock industry
5 in the west and particularly in California.

6 9. Any restriction on permitted grazing on national forests would inevitably
7 impact the base ranches of those permittees' grazing operations, but also on the entire
8 California cattle industry, and therefore this case directly impacts CCA's membership and
9 mission.

10 I declare under penalty of perjury pursuant to the laws of the State of California that the
11 foregoing is true and correct.

12 Executed this 5 day of June 2008, in Sacramento, California.

13
14
15 Justin Oldfield



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10
11 UNITED STATES DISTRICT COURT
12
13 NORTHERN DISTRICT OF CALIFORNIA
14
15 SAN FRANCISCO DIVISION
16

17 WESTERN WATERSHEDS PROJECT;
18 NATURAL RESOURCES DEFENSE
19 COUNCIL; CENTER FOR BIOLOGICAL
20 DIVERSITY; CALIFORNIA TROUT;
21 ENVIRONMENTAL PROTECTION
22 INFORMATION CENTER; KLAMATH
23 SISKIYOU WILDLANDS CENTER; LOS
24 PADRES FOREST WATCH; SIERRA
25 FOREST LEGACY; SEQUOIA
26 FORESTKEEPER; GRAND CANYON
27 TRUST; UTAH ENVIRONMENTAL
28 CONGRESS; RED ROCK FORESTS; and
OREGON NATURAL DESERT
ASSOCIATION,

Plaintiffs,

v.

U.S. FOREST SERVICE,

Defendant.

CALIFORNIA CATTLEMEN'S
ASSOCIATION,

Intervenor.

Case No. 08-CV-1460 PJH

[PROPOSED] CALIFORNIA CATTLEMEN'S
ASSOCIATION'S ANSWER IN
INTERVENTION OF PLAINTIFFS' FIRST
AMENDED COMPLAINT FOR
VIOLATIONS OF THE FISCAL YEAR 2005
CONSOLIDATED APPROPRIATIONS ACT,
THE NATIONAL ENVIRONMENTAL
POLICY ACT, AND THE APPEALS
REFORM ACT

Intervenor-Defendant CALIFORNIA CATTLEMEN'S ASSOCIATION ("CCA") hereby answers Plaintiffs' First Amended Complaint for Violations of the Fiscal Year 2005 Consolidated Appropriations Act, the National Environmental Policy Act, and the Appeals Reform Act, filed on May 30, 2008 ("First Amended Complaint") as follows:

INTRODUCTION

1. Answering the first sentence of paragraph 1 of the First Amended Complaint, CCA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the First Amended Complaint, and on that basis denies them.

Answering the second sentence of paragraph 1 of the First Amended Complaint, CCA denies each and every remaining allegation contained in the second sentence of paragraph 1 of the First Amended Complaint.

2. Answering paragraph 2 of the First Amended Complaint, CCA admits only that imprudent grazing may in limited cases have environmental impacts. CCA admits Forest Service lands are protected from adverse environmental impacts as a result of United States Forest Service ("USFS") rules on grazing. CCA denies each and every remaining allegation of paragraph 2.

3. Answering the first sentence of paragraph 3 of the First Amended Complaint, CCA admits only that imprudent grazing may in limited cases have environmental impacts. CCA admits Forest Service lands are protected from adverse environmental impacts as a result of USFS rules on grazing. Answering the second sentence of paragraph 3, CCA admits such review provides for examination of the impacts of livestock grazing on public land and an opportunity for the public to comment on and appeal grazing decisions. CCA denies each and every remaining allegation of paragraph 3.

4. Answering the first sentence of paragraph 4 of the First Amended Complaint, CCA admits that at the behest of the USFS, Congress passed an appropriations rider in 2005 that allows USFS to categorically exclude grazing reauthorization from National Environmental Policy Act ("NEPA") review under certain narrow circumstances. CCA denies each and every remaining allegation contained in the first sentence of paragraph 4. Answering the second sentence of

1 paragraph 4 of the First Amended Complaint, CCA admits that this is a characterization of current
2 law and not response is required. To the extent a response is required, CCA denies each and every
3 allegation contained in the second sentence of paragraph 4.

4 5. CCA denies each and every allegation of paragraph 5 of the First Amended
5 Complaint.

6 6. CCA denies each and every allegation of paragraph 6 of the First Amended
7 Complaint.

8 7. Answering paragraph 7 of the First Amended Complaint, CCA lacks knowledge or
9 information sufficient to form a belief as to the truth of the allegations contained in paragraph 7 of
10 the First Amended Complaint, and on that basis denies them.

11 **JURISDICTION AND VENUE**

12 8. Answering paragraph 8 of the First Amended Complaint, CCA lacks knowledge or
13 information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of
14 the First Amended Complaint, and on that basis denies them.

15 9. Answering paragraph 9 of the First Amended Complaint, CCA lacks knowledge or
16 information sufficient to form a belief as to the truth of the allegations contained in paragraph 9 of
17 the First Amended Complaint, and on that basis denies them.

18 10. Answering paragraph 10 of the First Amended Complaint, CCA lacks knowledge
19 or information sufficient to form a belief as to the truth of the allegations contained in paragraph
20 10 of the First Amended Complaint, and on that basis denies them.

21 **INTRA-DISTRICT AGREEMENT**

22 11. Answering paragraph 11 of the First Amended Complaint, CCA lacks knowledge
23 or information sufficient to form a belief as to the truth of the allegations contained in paragraph
24 11 of the First Amended Complaint, and on that basis denies them.

25 **PARTIES**

26
27 12. Answering paragraph 12 of the First Amended Complaint, CCA lacks knowledge
28 or information sufficient to form a belief as to the truth of the allegations contained in paragraph

12 of the First Amended Complaint, and on that basis denies them.

13. Answering paragraph 13 of the First Amended Complaint, CCA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 of the First Amended Complaint, and on that basis denies them.

14. Answering paragraph 14 of the First Amended Complaint, CCA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 of the First Amended Complaint, and on that basis denies them.

15. Answering paragraph 15 of the First Amended Complaint, CCA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 15 of the First Amended Complaint, and on that basis denies them.

16. Answering paragraph 16 of the First Amended Complaint, CCA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 16 of the First Amended Complaint, and on that basis denies them.

17. Answering paragraph 17 of the First Amended Complaint, CCA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17 of the First Amended Complaint, and on that basis denies them.

18. Answering paragraph 18 of the First Amended Complaint, CCA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 18 of the First Amended Complaint, and on that basis denies them.

19. Answering paragraph 19 of the First Amended Complaint, CCA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 19 of the First Amended Complaint, and on that basis denies them.

20. Answering paragraph 20 of the First Amended Complaint, CCA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20 of the First Amended Complaint, and on that basis denies them.

21. Answering paragraph 21 of the First Amended Complaint, CCA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 21 of the First Amended Complaint, and on that basis denies them.

1 22. Answering paragraph 22 of the First Amended Complaint, CCA lacks knowledge
2 or information sufficient to form a belief as to the truth of the allegations contained in paragraph
3 22 of the First Amended Complaint, and on that basis denies them.

4 23. Answering paragraph 23 of the First Amended Complaint, CCA lacks knowledge
5 or information sufficient to form a belief as to the truth of the allegations contained in paragraph
6 23 of the First Amended Complaint, and on that basis denies them.

7 24. Answering paragraph 24 of the First Amended Complaint, CCA lacks knowledge
8 or information sufficient to form a belief as to the truth of the allegations contained in paragraph
9 24 of the First Amended Complaint, and on that basis denies them.

10 25. Answering the first sentence of paragraph 25 of the First Amended Complaint,
11 CCA lacks knowledge or information sufficient to form a belief as to the truth of the allegations as
12 to the deep and longstanding interests in preservation and protection of western national forests
13 and their resources of plaintiffs, their staffs, members, and supporters contained in the first
14 sentence of paragraph 25 of the First Amended Complaint, and on that basis denies them. CCA
15 denies each and every remaining allegation contained in the first sentence of paragraph 25 of the
16 First Amended Complaint.

17 26. Answering paragraph 26 of the First Amended Complaint, CCA lacks knowledge
18 or information sufficient to form a belief as to the truth of the allegations contained in paragraph
19 26 of the First Amended Complaint, and on that basis denies them.

20 27. Answering the first sentence of paragraph 27 of the First Amended Complaint,
21 CCA lacks knowledge or information sufficient to form a belief as to the truth of the allegations
22 contained in the first sentence of paragraph 27 of the First Amended Complaint pertaining to the
23 interests of plaintiffs, their staff, members and supporters and on that basis denies them. CCA
24 denies each and every remaining allegation contained in the first sentence of paragraph 27 of the
25 First Amended Complaint. Answering the second sentence of paragraph 27 of the First Amended
26 Complaint, CCA denies each and every allegation of the second sentence of paragraph 27 of the
27 First Amended Complaint. CCA denies each and every remaining allegation of paragraph 27.

28 28. CCA admits the allegations contained in the first sentence of paragraph 28 of the

1 First Amended Complaint.

2 **LEGAL BACKGROUND**

3 29. Answering paragraph 29 of the First Amended Complaint, this paragraph is a
4 characterization of current law and no answer is required. To the extent an answer is required,
5 CCA denies each and every remaining allegation contained in the second sentence of paragraph
6 29. CCA denies each and every remaining allegation of paragraph 29.

7 30. Answering paragraph 30 of the First Amended Complaint, this paragraph is a
8 characterization of current law and no answer is required. To the extent an answer is required,
9 CCA lacks knowledge or information sufficient to form a belief as to the truth of the allegations
10 contained in the paragraph 30 of the of the First Amended Complaint, and on that basis denies it.

11 31. Answering the first sentence of paragraph 31 of the First Amended Complaint,
12 CCA admits NEPA provides for public input into the decision-making process, and USFS
13 regulations allow the public to appeal its final EA or EIS decisions. CCA denies each and every
14 remaining allegation contained in the first sentence of paragraph 31 of the First Amended
15 Complaint. Answering the second sentence of paragraph 31 of the First Amended Complaint,
16 CCA , this paragraph is a characterization of current law and no answer is required. To the extent
17 an answer is required, CCA lacks knowledge or information sufficient to form a belief as to the
18 truth of the allegations contained in the paragraph 31 of the of the First Amended Complaint, and
19 on that basis denies it. CCA denies each and every remaining allegation contained in the second
20 sentence of paragraph 31 of the First Amended Complaint.

21 32. Answering paragraph 32 of the First Amended Complaint, CCA admits the
22 issuance or renewal of a federal livestock grazing permit requires a NEPA review unless an
23 exclusion applies. CCA denies each and every remaining allegation contained in paragraph 32 of
24 the First Amended Complaint.

25 33. CCA admits the portion of Public Law 108-47 contained in paragraph 33 of the
26 First Amended Complaint has been accurately provided.

27 34. Answering paragraph 34 of the First Amended Complaint, CCA lacks knowledge
28 or information sufficient to form a belief as to the truth of the allegations contained therein, and on

1 that basis denies it.

2 35. Answering the first sentence of paragraph 35 of the First Amended Complaint, this
3 sentence is a characterization of current law and no answer is required. To the extent an answer is
4 required, CCA lacks knowledge or information sufficient to form a belief as to the truth of the
5 allegations contained in the first sentence of paragraph 35 of the of the First Amended Complaint,
6 and on that basis denies it. CCA denies each and every remaining allegation contained in the
7 second sentence of paragraph 35 of the First Amended Complaint.

8 36. CCA denies each and every remaining allegation in the first sentence of paragraph
9 36 of the First Amended Complaint. Answering the second sentence of paragraph 36 of the First
10 Amended Complaint, this sentence is a characterization of current law and no answer is required.
11 To the extent an answer is required, CCA lacks knowledge or information sufficient to form a
12 belief as to the truth of the allegations contained in the first sentence of paragraph 36 of the of the
13 First Amended Complaint, and on that basis denies it. Answering the third sentence of paragraph
14 36 of the First Amended Complaint, CCA lacks knowledge or information sufficient to form a
15 belief as to the truth of the allegations contained in the second sentence of paragraph 36 of the
16 First Amended Complaint, and on that basis denies them. CCA denies each and every remaining
17 allegation of paragraph 36.

18 37. Answering the first sentence of paragraph 37 of the First Amended Complaint, this
19 sentence is a characterization of current law and no answer is required. To the extent an answer is
20 required, CCA lacks knowledge or information sufficient to form a belief as to the truth of the
21 allegations contained in the first sentence of paragraph 37. CCA denies each and every remaining
22 allegation in the first sentence of paragraph 37 of the First Amended Complaint. Answering the
23 second sentence of paragraph 37 of the First Amended Complaint, CCA admits that each forest or
24 group of forests has its own Land and Resource Management Plan. CCA denies each and every
25 remaining allegation contained in the second sentence of paragraph 37.

26 38. Answering the first sentence of paragraph 38, this sentence is a characterization of
27 current law and no answer is required. To the extent an answer is required, CCA lacks knowledge
28 or information sufficient to form a belief as to the truth of the allegations contained in the first

1 sentence of paragraph 38. CCA denies each and every remaining allegation contained in
2 paragraph 38 of the First Amended Complaint.

3 39. CCA denies each and every allegation of paragraph 39 of the First Amended
4 Complaint.

5 40. Answering the first sentence of paragraph 40 of the First Amended Complaint,
6 CCA denies each and every allegation of the first sentence of paragraph 40 of the First Amended
7 complaint. Answering the second sentence of the First Amended Complaint, CCA lacks
8 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
9 the first sentence of paragraph 40 of the First Amended Complaint, and on that basis denies them.

10 41. Answering the first sentence of paragraph 41, this sentence is a characterization
11 of current law and no answer is required. To the extent an answer is required, CCA lacks
12 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
13 the first sentence of paragraph 41. CCA denies each and every remaining allegation contained in
14 paragraph 41 of the First Amended Complaint.

15 42. CCA denies each and every allegation of paragraph 42 of the First Amended
16 Complaint.

17 **FACTUAL BACKGROUND**

18 43. CCA denies each and every allegation of paragraph 43 of the First Amended
19 Complaint.

20 44. CCA denies each and every allegation of paragraph 44 of the First Amended
21 Complaint.

22
23 45. CCA denies each and every allegation of paragraph 45 of the First Amended
24 Complaint.

25 46. CCA denies each and every allegation of paragraph 46 of the First Amended
26 Complaint.

27 47. CCA denies each and every allegation of paragraph 47 of the First Amended
28 Complaint.

1 48. CCA denies each and every allegation of paragraph 48 of the First Amended
2 Complaint.

3 49. CCA denies each and every allegation of paragraph 49 of the First Amended
4 Complaint.

5 50. CCA denies each and every allegation of paragraph 50 of the First Amended
6 Complaint.

7 51. CCA denies each and every allegation of paragraph 51 of the First Amended
8 Complaint.

9 52. CCA denies each and every allegation of paragraph 52 of the First Amended
10 Complaint.

11 53. CCA denies each and every allegation of paragraph 53 of the First Amended
12 Complaint.

13 54. CCA denies each and every allegation of paragraph 54 of the First Amended
14 Complaint.

15 55. CCA denies each and every allegation of paragraph 55 of the First Amended
16 Complaint.

17 56. CCA denies each and every allegation of paragraph 56 of the First Amended
18 Complaint.

19 57. CCA denies each and every allegation of paragraph 57 of the First Amended
20 Complaint.

21 58. CCA denies each and every allegation of paragraph 58 of the First Amended
22 Complaint.

23 59. CCA denies each and every allegation of paragraph 59 of the First Amended
24 Complaint.

25 60. Answering paragraph 60 of the First Amended Complaint, CCA lacks knowledge
26 or information sufficient to form a belief as to the truth of the allegations contained in paragraph
27 60 of the First Amended Complaint, and on that basis denies it.

28 61. CCA denies each and every allegation of paragraph 61 of the First Amended

1 Complaint.

2 62. CCA denies each and every allegation of paragraph 62 of the First Amended
3 Complaint.

4 63. Answering paragraph 63 of the First Amended Complaint, CCA lacks knowledge
5 or information sufficient to form a belief as to the truth of the allegations contained in paragraph
6 63 of the First Amended Complaint, and on that basis denies it.

7 64. Answering the first sentence of paragraph 64 of the First Amended Complaint,
8 CCA denies each and every allegation in the first sentence of paragraph 64 of the First Amended
9 Complaint. Answering the second sentence of paragraph 64 of the First Amended Complaint,
10 CCA denies each and every allegation in the second sentence of paragraph 64 of the First
11 Amended Complaint. Answering the third sentence of paragraph 64 of the First Amended
12 Complaint, CCA lacks knowledge or information sufficient to form a belief as to the truth of the
13 allegations contained in the third sentence of paragraph 64 of the First Amended Complaint, and
14 on that basis denies them.

15 65. Answering the first sentence of paragraph 65 of the First Amended Complaint,
16 CCA denies each and every allegation in the first sentence of paragraph 65 of the First Amended
17 Complaint. Answering the second sentence of paragraph 65 of the First Amended Complaint,
18 CCA lacks knowledge or information sufficient to form a belief as to the truth of the allegations
19 contained in the second sentence of paragraph 65 of the First Amended Complaint, and on that
20 basis denies it. CCA denies each and every remaining allegation contained in the second
21 sentence of paragraph 65 of the First Amended Complaint. Answering the third sentence of
22 paragraph 65 of the First Amended Complaint, CCA lacks knowledge or information sufficient to
23 form a belief as to the truth of the allegations contained in the third sentence of paragraph 65 of
24 the First Amended Complaint, and on that basis denies it. Answering the fourth sentence of
25 paragraph 65 of the First Amended Complaint, CCA lacks knowledge or information sufficient to
26 form a belief as to the truth of the allegations contained in the fourth sentence of paragraph 65 of
27 the First Amended Complaint, and on that basis denies them. Answering the fifth sentence of
28 paragraph 65 of the First Amended Complaint, CCA denies each and every allegation in the fifth

1 sentence of paragraph 64 of the First Amended Complaint. Answering the sixth sentence of
2 paragraph 65 of the First Amended Complaint, CCA denies each and every allegation in the sixth
3 sentence of paragraph 64 of the First Amended Complaint. Answering the seventh sentence of
4 paragraph 65 of the First Amended Complaint, CCA denies each and every allegation in the
5 seventh sentence of paragraph 65 of the First Amended Complaint. Answering the eighth
6 sentence of paragraph 65 of the First Amended Complaint, CCA denies each and every allegation
7 in the eighth sentence of paragraph 64 of the First Amended Complaint.

8 66. CCA denies each and every allegation of paragraph 66 of the First Amended
9 Complaint.

10 67. CCA denies each and every allegation of paragraph 67 of the First Amended
11 Complaint.

12 68. Answering the first sentence of paragraph 68 of the First Amended Complaint,
13 CCA denies each and every allegation in the first sentence of paragraph 68 of the First Amended
14 Complaint. Answering the second sentence of paragraph 68 of the First Amended Complaint,
15 CCA lacks knowledge or information sufficient to form a belief as to the truth of the allegations
16 contained in the second sentence of paragraph 68 of the First Amended Complaint, and on that
17 basis denies it. Answering the third sentence of paragraph 68 of the First Amended Complaint,
18 CCA lacks knowledge or information sufficient to form a belief as to the truth of the allegations
19 contained in the third sentence of paragraph 68 of the First Amended Complaint, and on that basis
20 denies it. Answering the fourth sentence of paragraph 68 of the First Amended Complaint, CCA
21 denies each and every allegation of the fourth sentence. CCA denies each and every remaining
22 allegation of paragraph 68 of the First Amended Complaint.

23 69. CCA denies each and every allegation of paragraph 69 of the First Amended
24 Complaint.

25 70. CCA denies each and every allegation of paragraph 70 of the First Amended
26 Complaint.

27 71. CCA admits the allegations contained in paragraph 71 of the First Amended
28 Complaint.

1 72. Answering the first sentence in paragraph 72 of the First Amended Complaint,
2 CCA denies each and every allegation of the first sentence of paragraph 72 of the First Amended
3 Complaint. Answering sentences two, three and four in paragraph 72 of the First Amended
4 Complaint, CCA lacks knowledge or information sufficient to form a belief as to the truth of the
5 allegations contained in these sentences, and on that basis denies them. CCA denies each and
6 every allegation of paragraph 73 of the First Amended Complaint.

7 73. CCA denies each and every allegation of paragraph 73 of the First Amended
8 Complaint.

9 74. CCA denies each and every allegation of paragraph 74 of the First Amended
10 Complaint.

11 75. CCA denies each and every allegation of paragraph 75 of the First Amended
12 Complaint.

13 76. CCA denies each and every allegation of paragraph 76 of the First Amended
14 Complaint.

15 77. CCA denies each and every allegation of paragraph 77 of the First Amended
16 Complaint.

17 78. CCA admits the allegations contained in paragraph 78 of the First Amended
18 Complaint.

19 79. CCA denies each and every allegation of paragraph 79 of the First Amended
20 Complaint.

21 80. CCA admits the allegations contained in paragraph 80 of the First Amended
22 Complaint.

23 81. CCA admits the 1964 Wilderness Act (16 U.S.C. §§ 1131-1136) exists and that
24 paragraph 81 is a characterization of it for which no answer is required. To the extent an answer
25 is required, CCA lacks knowledge or information sufficient to form a belief as to the truth of the
26 allegations contained in paragraph 81 of the First Amended Complaint, and on that basis denies it.

27 82. Answering the first sentence in paragraph 82 of the First Amended Complaint,
28 CCA admits the 1964 Wilderness Act (16 U.S.C. § 1133(d)(4)(2)) exists and that paragraph 82 is

1 a characterization of it for which no answer is required. To the extent an answer is required, CCA
2 lacks knowledge or information sufficient to form a belief as to the truth of the allegations
3 contained in paragraph 82 of the First Amended Complaint, and on that basis denies it. CCA
4 denies each and every remaining allegation contained in the first sentence of paragraph 82 of the
5 First Amended Complaint. Answering the second sentence in paragraph 82 of the First Amended
6 Complaint, CCA admits Public Law Number 96-560, Section 108, exists and that this paragraph is
7 a characterization of it for which no answer is required, To the extent an answer is required, CCA
8 denies each and every remaining allegation contained in the second sentence of paragraph 82 of
9 the First Amended Complaint.

10 83. CCA denies each and every allegation of paragraph 83 of the First Amended
11 Complaint.

12 84. CCA denies each and every allegation of paragraph 84 of the First Amended
13 Complaint.

14 85. CCA denies each and every allegation of paragraph 85 of the First Amended
15 Complaint.

16 86. Answering the first sentence in paragraph 86 of the First Amended Complaint,
17 CCA admits the rider contains three requirements that must be met to reauthorize grazing under a
18 categorical exclusion ("CE"). CCA denies each and every allegation of the first sentence of
19 paragraph 86 of the First Amended Complaint. Answering sentence two in paragraph 86 of the
20 First Amended Complaint, CCA denies each and every allegation contained in sentence two of
21 paragraph 86 of the First Amended Complaint.

22 87. CCA denies each and every allegation of paragraph 87 of the First Amended
23 Complaint.

24 88. Answering the first sentence in paragraph 88 of the First Amended Complaint,
25 CCA admits that the rider's first requirement is that the CE decision continue current grazing
26 management of the allotment. CCA denies each and every remaining allegation of the first
27 sentence of paragraph 88 of the First Amended Complaint. Answering the second sentence in
28 paragraph 88 of the First Amended Complaint, CCA denies each and every remaining allegation

1 in the second sentence of paragraph 88 of the First Amended Complaint. Answering the third
2 sentence in paragraph 88 of the First Amended Complaint, CCA denies each and every allegation
3 contained in the third sentence of paragraph 88 of the First Amended Complaint.

4 89. CCA denies each and every allegation of paragraph 89 of the First Amended
5 Complaint.

6 90. CCA denies each and every allegation of paragraph 90 of the First Amended
7 Complaint.

8 91. Answering the first sentence in paragraph 91 of the First Amended Complaint,
9 CCA admits that the 2005 appropriation rider exists and that paragraph 91 is a characterization of
10 it for which no answer is required. To the extent an answer is required, CCA denies each and
11 every remaining allegation of the first sentence of paragraph 91 of the First Amended Complaint.
12 Answering the second sentence in paragraph 91 of the First Amended Complaint, CCA denies
13 each and every remaining allegation in the second sentence of paragraph 91 of the First Amended
14 Complaint. Answering the third sentence in paragraph 91 of the First Amended Complaint, CCA
15 denies each and every allegation contained in the third sentence of paragraph 91 of the First
16 Amended Complaint.

17 92. CCA denies each and every allegation of paragraph 92 of the First Amended
18 Complaint.

19 93. CCA denies each and every allegation of paragraph 93 of the First Amended
20 Complaint.

21 94. CCA denies each and every allegation of paragraph 94 of the First Amended
22 Complaint.

23 95. CCA denies each and every allegation of paragraph 95 of the First Amended
24 Complaint.

25 96. CCA denies each and every allegation of paragraph 96 of the First Amended
26 Complaint.

27 97. CCA denies each and every allegation of paragraph 97 of the First Amended
28 Complaint.

1 98. Answering the first sentence of paragraph 98 of the First Amended Complaint,
2 CCA admits that the USFS recognizes the importance of monitoring the environmental impacts of
3 grazing. CCA denies each and every remaining allegation of the first sentence of paragraph 98 of
4 the First Amended Complaint. Answering the second sentence in paragraph 98 of the First
5 Amended Complaint, CCA denies each and every allegation of the second sentence of paragraph
6 98 of the First Amended Complaint. Answering the third sentence in paragraph 98 of the First
7 Amended Complaint, CCA denies each and every allegation of the third sentence of paragraph 98
8 of the First Amended Complaint.

9 99. CCA denies each and every allegation of paragraph 99 of the First Amended
10 Complaint.

11 100. CCA denies each and every allegation of paragraph 100 of the First Amended
12 Complaint.

13 101. CCA denies each and every allegation of paragraph 101 of the First Amended
14 Complaint.

15 102. CCA denies each and every allegation of paragraph 102 of the First Amended
16 Complaint.

17 103. Answering the first sentence of paragraph 103 of the First Amended Complaint,
18 CCA admits that the 2005 appropriation rider exists and that paragraph 103 is a characterization
19 of it for which no answer is required. To the extent an answer is required, CCA denies each and
20 every remaining allegation contained in the first sentence of paragraph 103 of the First Amended
21 Complaint. Answering the second sentence in paragraph 103 of the First Amended Complaint,
22 CCA admits that Forest Service Handbook, chapter 1909.15.3.2 exists and that this sentence is a
23 characterization of it for which no response is required. To the extent a response is required, CCA
24 denies each and every remaining allegation of the second sentence of paragraph 103 of the First
25 Amended Complaint.

26 104. CCA denies each and every allegation of paragraph 104 of the First Amended
27 Complaint.

28 105. CCA denies each and every allegation of paragraph 105 of the First Amended

1 Complaint.

2 106. CCA denies each and every allegation of paragraph 106 of the First Amended
3 Complaint.

4 107. CCA denies each and every allegation of paragraph 107 of the First Amended
5 Complaint.

6 108. CCA denies each and every allegation of paragraph 108 of the First Amended
7 Complaint.

8 109. Answering the first sentence of paragraph 109 of the First Amended Complaint,
9 CCA denies each and every allegation contained in the first sentence of paragraph 109 of the First
10 Amended Complaint. Answering the second sentence in paragraph 109 of the First Amended
11 Complaint, CCA lacks knowledge or information sufficient to form a belief as to the truth of the
12 allegations contained in the second sentence of paragraph 109 of the First Amended Complaint,
13 and on that basis denies them. Answering the third sentence in paragraph 109 of the First
14 Amended Complaint, CCA denies each and every allegation contained in the third sentence of
15 paragraph 109 of the First Amended Complaint.

16 **UNLAWFUL CES ISSUED IN CALIFORNIA FORESTS**

17 ***LOS PADRES NATIONAL FOREST***

18 110. CCA lacks knowledge or information sufficient to form a belief as to the truth of
19 the allegations contained in the paragraph 110 of the of the First Amended Complaint, and on that
20 basis denies it.

21 111. CCA lacks knowledge or information sufficient to form a belief as to the truth of
22 the allegations contained in the paragraph 111 of the of the First Amended Complaint, and on that
23 basis denies it.

24 112. CCA lacks knowledge or information sufficient to form a belief as to the truth of
25 the allegations contained in the paragraph 112 of the of the First Amended Complaint, and on that
26 basis denies it.

27 113. CCA lacks knowledge or information sufficient to form a belief as to the truth of
28 the allegations contained in the paragraph 113 of the of the First Amended Complaint, and on that

1 basis denies it.

2 114. CCA lacks knowledge or information sufficient to form a belief as to the truth of
3 the allegations contained in the paragraph 114 of the of the First Amended Complaint, and on that
4 basis denies it.

5 ***MENDOCINO NATIONAL FOREST***

6 115. CCA lacks knowledge or information sufficient to form a belief as to the truth of
7 the allegations contained in the paragraph 115 of the of the First Amended Complaint, and on that
8 basis denies it.

9 116. CCA lacks knowledge or information sufficient to form a belief as to the truth of
10 the allegations contained in the paragraph 116 of the of the First Amended Complaint, and on that
11 basis denies it.

12 117. CCA lacks knowledge or information sufficient to form a belief as to the truth of
13 the allegations contained in the paragraph 117 of the of the First Amended Complaint, and on that
14 basis denies it.

15 118. CCA lacks knowledge or information sufficient to form a belief as to the truth of
16 the allegations contained in the paragraph 118 of the of the First Amended Complaint, and on that
17 basis denies it.

18 ***KLAMATH NATIONAL FOREST***

19 119. CCA lacks knowledge or information sufficient to form a belief as to the truth of
20 the allegations contained in the paragraph 119 of the of the First Amended Complaint, and on that
21 basis denies it.

22 120. CCA lacks knowledge or information sufficient to form a belief as to the truth of
23 the allegations contained in the paragraph 120 of the of the First Amended Complaint, and on that
24 basis denies it.

25 121. CCA lacks knowledge or information sufficient to form a belief as to the truth of
26 the allegations contained in the paragraph 121 of the of the First Amended Complaint, and on that
27 basis denies it.

28 122. CCA lacks knowledge or information sufficient to form a belief as to the truth of

1 the allegations contained in the paragraph 122 of the of the First Amended Complaint, and on that
2 basis denies it.

3 ***MODOC NATIONAL FOREST***

4 123. CCA lacks knowledge or information sufficient to form a belief as to the truth of
5 the allegations contained in the paragraph 123 of the of the First Amended Complaint, and on that
6 basis denies it.

7 124. CCA lacks knowledge or information sufficient to form a belief as to the truth of
8 the allegations contained in the paragraph 124 of the of the First Amended Complaint, and on that
9 basis denies it.

10 125. CCA lacks knowledge or information sufficient to form a belief as to the truth of
11 the allegations contained in the paragraph 125 of the of the First Amended Complaint, and on that
12 basis denies it.

13 126. CCA lacks knowledge or information sufficient to form a belief as to the truth of
14 the allegations contained in the paragraph 126 of the of the First Amended Complaint, and on that
15 basis denies it.

16 127. CCA lacks knowledge or information sufficient to form a belief as to the truth of
17 the allegations contained in the paragraph 127 of the of the First Amended Complaint, and on that
18 basis denies it.

19 128. CCA lacks knowledge or information sufficient to form a belief as to the truth of
20 the allegations contained in the paragraph 128 of the of the First Amended Complaint, and on that
21 basis denies it.

22 129. CCA lacks knowledge or information sufficient to form a belief as to the truth of
23 the allegations contained in the paragraph 129 of the of the First Amended Complaint, and on that
24 basis denies it.

25 130. CCA lacks knowledge or information sufficient to form a belief as to the truth of
26 the allegations contained in the paragraph 130 of the of the First Amended Complaint, and on that
27 basis denies it.

LASSEN NATIONAL FOREST

131. CCA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph 131 of the of the First Amended Complaint, and on that basis denies it.

132. CCA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph 132 of the of the First Amended Complaint, and on that basis denies it.

133. CCA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph 133 of the of the First Amended Complaint, and on that basis denies it.

134. CCA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph 134 of the of the First Amended Complaint, and on that basis denies it.

135. CCA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph 135 of the of the First Amended Complaint, and on that basis denies it.

136. CCA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph 136 of the of the First Amended Complaint, and on that basis denies it.

137. CCA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph 137 of the of the First Amended Complaint, and on that basis denies it.

PLUMAS NATIONAL FOREST

138. CCA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph 138 of the of the First Amended Complaint, and on that basis denies it.

139. CCA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph 139 of the of the First Amended Complaint, and on that

1 basis denies it.

2 140. CCA lacks knowledge or information sufficient to form a belief as to the truth of
3 the allegations contained in the paragraph 140 of the of the First Amended Complaint, and on that
4 basis denies it.

5 141. CCA lacks knowledge or information sufficient to form a belief as to the truth of
6 the allegations contained in the paragraph 141 of the of the First Amended Complaint, and on that
7 basis denies it.

8 142. CCA lacks knowledge or information sufficient to form a belief as to the truth of
9 the allegations contained in the paragraph 142 of the of the First Amended Complaint, and on that
10 basis denies it.

11 ***STANISLAUS NATIONAL FOREST***

12 143. CCA lacks knowledge or information sufficient to form a belief as to the truth of
13 the allegations contained in the paragraph 143 of the of the First Amended Complaint, and on that
14 basis denies it.

15 144. CCA lacks knowledge or information sufficient to form a belief as to the truth of
16 the allegations contained in the paragraph 144 of the of the First Amended Complaint, and on that
17 basis denies it.

18 145. CCA lacks knowledge or information sufficient to form a belief as to the truth of
19 the allegations contained in the paragraph 145 of the of the First Amended Complaint, and on that
20 basis denies it.

21 146. CCA lacks knowledge or information sufficient to form a belief as to the truth of
22 the allegations contained in the paragraph 146 of the of the First Amended Complaint, and on that
23 basis denies it.

24 147. CCA lacks knowledge or information sufficient to form a belief as to the truth of
25 the allegations contained in the paragraph 147 of the of the First Amended Complaint, and on that
26 basis denies it.

27 148. CCA lacks knowledge or information sufficient to form a belief as to the truth of
28 the allegations contained in the paragraph 148 of the of the First Amended Complaint, and on that

1 basis denies it.

2 149. CCA lacks knowledge or information sufficient to form a belief as to the truth of
3 the allegations contained in the paragraph 149 of the of the First Amended Complaint, and on that
4 basis denies it.\

5 ***INYO NATIONAL FOREST***

6 150. CCA lacks knowledge or information sufficient to form a belief as to the truth of
7 the allegations contained in the paragraph 150 of the of the First Amended Complaint, and on that
8 basis denies it.

9 151. CCA lacks knowledge or information sufficient to form a belief as to the truth of
10 the allegations contained in the paragraph 151 of the of the First Amended Complaint, and on that
11 basis denies it.

12 152. CCA lacks knowledge or information sufficient to form a belief as to the truth of
13 the allegations contained in the paragraph 152 of the of the First Amended Complaint, and on that
14 basis denies it.

15 153. CCA lacks knowledge or information sufficient to form a belief as to the truth of
16 the allegations contained in the paragraph 153 of the of the First Amended Complaint, and on that
17 basis denies it.

18 ***SEQUOIA NATIONAL FOREST***

19 154. CCA lacks knowledge or information sufficient to form a belief as to the truth of
20 the allegations contained in the paragraph 154 of the of the First Amended Complaint, and on that
21 basis denies it.

22 155. CCA lacks knowledge or information sufficient to form a belief as to the truth of
23 the allegations contained in the paragraph 155 of the of the First Amended Complaint, and on that
24 basis denies it.

25 156. CCA lacks knowledge or information sufficient to form a belief as to the truth of
26 the allegations contained in the paragraph 156 of the of the First Amended Complaint, and on that
27 basis denies it.

28 157. CCA lacks knowledge or information sufficient to form a belief as to the truth of

1 the allegations contained in the paragraph 157 of the of the First Amended Complaint, and on that
2 basis denies it.

3 **UNLAWFUL CES ISSUED IN ARIZONA ON THE PRESCOTT**

4 **NATIONAL FOREST**

5 158. CCA lacks knowledge or information sufficient to form a belief as to the truth of
6 the allegations contained in the paragraph 158 of the of the First Amended Complaint, and on that
7 basis denies it.

8 159. CCA lacks knowledge or information sufficient to form a belief as to the truth of
9 the allegations contained in the paragraph 159 of the of the First Amended Complaint, and on that
10 basis denies it.

11 160. CCA lacks knowledge or information sufficient to form a belief as to the truth of
12 the allegations contained in the paragraph 160 of the of the First Amended Complaint, and on that
13 basis denies it.

14 161. CCA lacks knowledge or information sufficient to form a belief as to the truth of
15 the allegations contained in the paragraph 161 of the of the First Amended Complaint, and on that
16 basis denies it.

17 162. CCA lacks knowledge or information sufficient to form a belief as to the truth of
18 the allegations contained in the paragraph 162 of the of the First Amended Complaint, and on that
19 basis denies it.

20 163. CCA lacks knowledge or information sufficient to form a belief as to the truth of
21 the allegations contained in the paragraph 163 of the of the First Amended Complaint, and on that
22 basis denies it.

23 **UNLAWFUL CES ISSUED ON THE IDAHO FORESTS**

24 ***SALMON-CHALLIS NATIONAL FOREST***

25 164. CCA lacks knowledge or information sufficient to form a belief as to the truth of
26 the allegations contained in the paragraph 164 of the of the First Amended Complaint, and on that
27 basis denies it.

28 165. CCA lacks knowledge or information sufficient to form a belief as to the truth of

1 the allegations contained in the paragraph 165 of the of the First Amended Complaint, and on that
2 basis denies it.

3 166. CCA lacks knowledge or information sufficient to form a belief as to the truth of
4 the allegations contained in the paragraph 166 of the of the First Amended Complaint, and on that
5 basis denies it.

6 167. CCA lacks knowledge or information sufficient to form a belief as to the truth of
7 the allegations contained in the paragraph 167 of the of the First Amended Complaint, and on that
8 basis denies it.

9 168. CCA lacks knowledge or information sufficient to form a belief as to the truth of
10 the allegations contained in the paragraph 168 of the of the First Amended Complaint, and on that
11 basis denies it.

12 169. CCA lacks knowledge or information sufficient to form a belief as to the truth of
13 the allegations contained in the paragraph 169 of the of the First Amended Complaint, and on that
14 basis denies it.

15 ***CARIBOU-TARGHEE NATIONAL FOREST***

16 170. CCA lacks knowledge or information sufficient to form a belief as to the truth of
17 the allegations contained in the paragraph 170 of the of the First Amended Complaint, and on that
18 basis denies it.

19 171. CCA lacks knowledge or information sufficient to form a belief as to the truth of
20 the allegations contained in the paragraph 171 of the of the First Amended Complaint, and on that
21 basis denies it.

22 172. CCA lacks knowledge or information sufficient to form a belief as to the truth of
23 the allegations contained in the paragraph 172 of the of the First Amended Complaint, and on that
24 basis denies it.

25 173. CCA lacks knowledge or information sufficient to form a belief as to the truth of
26 the allegations contained in the paragraph 173 of the of the First Amended Complaint, and on that
27 basis denies it.

28 174. CCA lacks knowledge or information sufficient to form a belief as to the truth of

1 the allegations contained in the paragraph 174 of the of the First Amended Complaint, and on that
2 basis denies it.

3 175. CCA lacks knowledge or information sufficient to form a belief as to the truth of
4 the allegations contained in the paragraph 175 of the of the First Amended Complaint, and on that
5 basis denies it.

6 176. CCA lacks knowledge or information sufficient to form a belief as to the truth of
7 the allegations contained in the paragraph 176 of the of the First Amended Complaint, and on that
8 basis denies it.

9 177. CCA lacks knowledge or information sufficient to form a belief as to the truth of
10 the allegations contained in the paragraph 177 of the of the First Amended Complaint, and on that
11 basis denies it.

12 **UNLAWFUL CES ISSUED IN WYOMING FORESTS**

13 ***BRIDGER-TETON NATIONAL FOREST***

14 178. CCA lacks knowledge or information sufficient to form a belief as to the truth of
15 the allegations contained in the paragraph 178 of the of the First Amended Complaint, and on that
16 basis denies it.

17 179. CCA lacks knowledge or information sufficient to form a belief as to the truth of
18 the allegations contained in the paragraph 179 of the of the First Amended Complaint, and on that
19 basis denies it.

20 180. CCA lacks knowledge or information sufficient to form a belief as to the truth of
21 the allegations contained in the paragraph 180 of the of the First Amended Complaint, and on that
22 basis denies it.

23 181. CCA lacks knowledge or information sufficient to form a belief as to the truth of
24 the allegations contained in the paragraph 181 of the of the First Amended Complaint, and on that
25 basis denies it.

26 182. CCA lacks knowledge or information sufficient to form a belief as to the truth of
27 the allegations contained in the paragraph 182 of the of the First Amended Complaint, and on that
28 basis denies it.

1 183. CCA lacks knowledge or information sufficient to form a belief as to the truth of
2 the allegations contained in the paragraph 183 of the of the First Amended Complaint, and on that
3 basis denies it.

4 184. CCA lacks knowledge or information sufficient to form a belief as to the truth of
5 the allegations contained in the paragraph 184 of the of the First Amended Complaint, and on that
6 basis denies it.

7 185. CCA lacks knowledge or information sufficient to form a belief as to the truth of
8 the allegations contained in the paragraph 185 of the of the First Amended Complaint, and on that
9 basis denies it.

10 ***SHOSHONE NATIONAL FOREST***

11 186. CCA lacks knowledge or information sufficient to form a belief as to the truth of
12 the allegations contained in the paragraph 186 of the of the First Amended Complaint, and on that
13 basis denies it.

14 187. CCA lacks knowledge or information sufficient to form a belief as to the truth of
15 the allegations contained in the paragraph 187 of the of the First Amended Complaint, and on that
16 basis denies it.

17 188. CCA lacks knowledge or information sufficient to form a belief as to the truth of
18 the allegations contained in the paragraph 188 of the of the First Amended Complaint, and on that
19 basis denies it.

20 **UNLAWFUL CES ISSUED IN UTAH FORESTS**

21 ***WASATCH-CACHE NATIONAL FOREST***

22 189. CCA lacks knowledge or information sufficient to form a belief as to the truth of
23 the allegations contained in the paragraph 189 of the of the First Amended Complaint, and on that
24 basis denies it.

25 190. CCA lacks knowledge or information sufficient to form a belief as to the truth of
26 the allegations contained in the paragraph 190 of the of the First Amended Complaint, and on that
27 basis denies it.

28 191. CCA lacks knowledge or information sufficient to form a belief as to the truth of

1 the allegations contained in the paragraph 191 of the of the First Amended Complaint, and on that
2 basis denies it.

3 192. CCA lacks knowledge or information sufficient to form a belief as to the truth of
4 the allegations contained in the paragraph 192 of the of the First Amended Complaint, and on that
5 basis denies it.

6 193. CCA lacks knowledge or information sufficient to form a belief as to the truth of
7 the allegations contained in the paragraph 193 of the of the First Amended Complaint, and on that
8 basis denies it.

9
10 194. CCA lacks knowledge or information sufficient to form a belief as to the truth of
11 the allegations contained in the paragraph 194 of the of the First Amended Complaint, and on that
12 basis denies it.

13 ***ASHLEY NATIONAL FOREST***

14 195. CCA lacks knowledge or information sufficient to form a belief as to the truth of
15 the allegations contained in the paragraph 195 of the of the First Amended Complaint, and on that
16 basis denies it.

17 196. CCA lacks knowledge or information sufficient to form a belief as to the truth of
18 the allegations contained in the paragraph 196 of the of the First Amended Complaint, and on that
19 basis denies it.

20 197. CCA lacks knowledge or information sufficient to form a belief as to the truth of
21 the allegations contained in the paragraph 197 of the of the First Amended Complaint, and on that
22 basis denies it.

23 198. CCA lacks knowledge or information sufficient to form a belief as to the truth of
24 the allegations contained in the paragraph 198 of the of the First Amended Complaint, and on that
25 basis denies it.

26 199. CCA lacks knowledge or information sufficient to form a belief as to the truth of
27 the allegations contained in the paragraph 199 of the of the First Amended Complaint, and on that
28 basis denies it.

MANTI LA SAL NATIONAL FOREST

200. CCA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph 200 of the of the First Amended Complaint, and on that basis denies it.

201. CCA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph 201 of the of the First Amended Complaint, and on that basis denies it.

202. CCA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph 202 of the of the First Amended Complaint, and on that basis denies it.

203. CCA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph 203 of the of the First Amended Complaint, and on that basis denies it.

204. CCA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph 204 of the of the First Amended Complaint, and on that basis denies it.

205. CCA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph 205 of the of the First Amended Complaint, and on that basis denies it.

206. CCA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph 206 of the of the First Amended Complaint, and on that basis denies it.

207. CCA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph 207 of the of the First Amended Complaint, and on that basis denies it.

FISHLAKE NATIONAL FOREST

208. CCA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph 208 of the of the First Amended Complaint, and on that

1 basis denies it.

2 209. CCA lacks knowledge or information sufficient to form a belief as to the truth of
3 the allegations contained in the paragraph 209 of the of the First Amended Complaint, and on that
4 basis denies it.

5 210. CCA lacks knowledge or information sufficient to form a belief as to the truth of
6 the allegations contained in the paragraph 210 of the of the First Amended Complaint, and on that
7 basis denies it.

8 211. CCA lacks knowledge or information sufficient to form a belief as to the truth of
9 the allegations contained in the paragraph 211 of the of the First Amended Complaint, and on that
10 basis denies it.

11 212. CCA lacks knowledge or information sufficient to form a belief as to the truth of
12 the allegations contained in the paragraph 212 of the of the First Amended Complaint, and on that
13 basis denies it.

14 **UNLAWFUL CES ISSUED IN COLORADO FORESTS**

15 ***RIO GRANDE NATIONAL FOREST***

16 213. CCA lacks knowledge or information sufficient to form a belief as to the truth of
17 the allegations contained in the paragraph 213 of the of the First Amended Complaint, and on
18 that basis denies it.

19 214. CCA lacks knowledge or information sufficient to form a belief as to the truth of
20 the allegations contained in the paragraph 214 of the of the First Amended Complaint, and on that
21 basis denies it.

22 215. CCA lacks knowledge or information sufficient to form a belief as to the truth of
23 the allegations contained in the paragraph 215 of the of the First Amended Complaint, and on that
24 basis denies it.

25 216. CCA lacks knowledge or information sufficient to form a belief as to the truth of
26 the allegations contained in the paragraph 216 of the of the First Amended Complaint, and on that
27 basis denies it.

28 217. CCA lacks knowledge or information sufficient to form a belief as to the truth of

1 the allegations contained in the paragraph 217 of the of the First Amended Complaint, and on that
2 basis denies it.

3 ***MEDICINE BOW-ROUTT NATIONAL FORESTS***

4 218. CCA lacks knowledge or information sufficient to form a belief as to the truth of
5 the allegations contained in the paragraph 218 of the of the First Amended Complaint, and on that
6 basis denies it.

7 219. CCA lacks knowledge or information sufficient to form a belief as to the truth of
8 the allegations contained in the paragraph 219 of the of the First Amended Complaint, and on that
9 basis denies it.

10 220. CCA lacks knowledge or information sufficient to form a belief as to the truth of
11 the allegations contained in the paragraph 220 of the of the First Amended Complaint, and on that
12 basis denies it.

13 221. CCA lacks knowledge or information sufficient to form a belief as to the truth of
14 the allegations contained in the paragraph 221 of the of the First Amended Complaint, and on that
15 basis denies it.

16 222. CCA lacks knowledge or information sufficient to form a belief as to the truth of
17 the allegations contained in the paragraph 222 of the of the First Amended Complaint, and on that
18 basis denies it.

19 ***PIKE AND SAN ISABEL NATIONAL FOREST***

20 223. CCA lacks knowledge or information sufficient to form a belief as to the truth of
21 the allegations contained in the paragraph 223 of the of the First Amended Complaint, and on that
22 basis denies it.

23 224. CCA lacks knowledge or information sufficient to form a belief as to the truth of
24 the allegations contained in the paragraph 224 of the of the First Amended Complaint, and on that
25 basis denies it.

26 225. CCA lacks knowledge or information sufficient to form a belief as to the truth of
27 the allegations contained in the paragraph 225 of the of the First Amended Complaint, and on that
28 basis denies it.

1 226. CCA lacks knowledge or information sufficient to form a belief as to the truth of
2 the allegations contained in the paragraph 226 of the of the First Amended Complaint, and on that
3 basis denies it.

4 227. CCA lacks knowledge or information sufficient to form a belief as to the truth of
5 the allegations contained in the paragraph 227 of the of the First Amended Complaint, and on that
6 basis denies it.

7
8
9 **UNLAWFUL CES ISSUED IN OREGON FORESTS**

10 ***MALHEUR NATIONAL FOREST***

11 228. CCA lacks knowledge or information sufficient to form a belief as to the truth of
12 the allegations contained in the paragraph 228 of the of the First Amended Complaint, and on that
13 basis denies it.

14 229. CCA lacks knowledge or information sufficient to form a belief as to the truth of
15 the allegations contained in the paragraph 229 of the of the First Amended Complaint, and on that
16 basis denies it.

17 230. CCA lacks knowledge or information sufficient to form a belief as to the truth of
18 the allegations contained in the paragraph 230 of the of the First Amended Complaint, and on that
19 basis denies it.

20 231. CCA lacks knowledge or information sufficient to form a belief as to the truth of
21 the allegations contained in the paragraph 231 of the of the First Amended Complaint, and on that
22 basis denies it.

23 232. CCA lacks knowledge or information sufficient to form a belief as to the truth of
24 the allegations contained in the paragraph 232 of the of the First Amended Complaint, and on that
25 basis denies it.

26 233. CCA lacks knowledge or information sufficient to form a belief as to the truth of
27 the allegations contained in the paragraph 233 of the of the First Amended Complaint, and on that
28 basis denies it.

UMATILLA NATIONAL FOREST

234. CCA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph 234 of the of the First Amended Complaint, and on that basis denies it.

235. CCA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph 235 of the of the First Amended Complaint, and on that basis denies it.

236. CCA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph 236 of the of the First Amended Complaint, and on that basis denies it.

237. CCA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph 237 of the of the First Amended Complaint, and on that basis denies it.

UNLAWFUL CES ISSUED IN WASHINGTON FORESTS

OKANOAGAN-WENATCHEE NATIONAL FOREST

238. CCA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph 238 of the of the First Amended Complaint, and on that basis denies it.

239. CCA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph 239 of the of the First Amended Complaint, and on that basis denies it.

240. CCA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph 240 of the of the First Amended Complaint, and on that basis denies it.

241. CCA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph 241 of the of the First Amended Complaint, and on that basis denies it.

242. CCA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph 242 of the of the First Amended Complaint, and on that basis denies it.

243. CCA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph 243 of the of the First Amended Complaint, and on that basis denies it.

COLVILLE NATIONAL FOREST

244. CCA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph 244 of the of the First Amended Complaint, and on that basis denies it.

245. CCA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph 245 of the of the First Amended Complaint, and on that basis denies it.

246. CCA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph 246 of the of the First Amended Complaint, and on that basis denies it.

247. CCA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph 247 of the of the First Amended Complaint, and on that basis denies it.

248. CCA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph 248 of the of the First Amended Complaint, and on that basis denies it.

249. CCA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph 249 of the of the First Amended Complaint, and on that basis denies it.

**FIRST CLAIM FOR RELIEF (FOR VIOLATIONS OF THE 2005
APPROPRIATIONS RIDER)**

250. Answering paragraph 250 of the First Amended Complaint, CCA incorporates by reference its responses to paragraph's 1 through 249 inclusive.

251. Answering paragraph 251 of the First Amended Complaint, CCA asserts that this paragraph is a characterization of the Plaintiffs' interpretation of the governing legal standard, to which no response is required. To the extent an answer is required, CCA denies each and every allegation contained in paragraph 251.

252. Answering paragraph 252 of the First Amended Complaint, CCA denies each and every allegation contained in paragraph 252.

253. Answering paragraph 253 of the First Amended Complaint, CCA denies each and every allegation contained in paragraph 253.

**SECOND CLAIM FOR RELIEF (FOR VIOLATIONS OF THE NATIONAL
ENVIRONMENTAL POLICY ACT)**

254. Answering paragraph 254 of the First Amended Complaint, CCA incorporates by reference its responses to paragraph's 1 through 253 inclusive.

255. Answering paragraph 255 of the First Amended Complaint, CCA denies each and every allegation contained in paragraph 255.

256. Answering paragraph 256 of the First Amended Complaint, CCA denies each and every allegation contained in paragraph 256.

257. Answering paragraph 257 of the First Amended Complaint, CCA denies each and every allegation contained in paragraph 257.

**THIRD CLAIM FOR RELIEF (FOR VIOLATIONS OF THE APPEALS
REFORM ACT)**

258. Answering paragraph 258 of the First Amended Complaint, CCA incorporates by reference its responses to paragraph's 1 through 257 inclusive.

259. Answering paragraph 259 of the First Amended Complaint, CCA denies each and every allegation contained in paragraph 259.

1 260. Answering paragraph 260 of the First Amended Complaint, CCA denies each and
2 every allegation contained in paragraph 260.

3 261. Answering paragraph 261 of the First Amended Complaint, CCA denies each and
4 every allegation contained in paragraph 261.

5 PRAYER FOR RELIEF

6 The remainder of Plaintiffs' First Amended Complaint consists of the prayer for relief and
7 requires no response. To the extent a response is required, CCA denies that Plaintiffs are entitled
8 to the relief they request or any relief whatsoever.

9 FIRST AFFIRMATIVE DEFENSE

10 As a first and separate affirmative defense, CCA alleges that Plaintiffs' First Amended
11 Complaint, and each claim therein, fails to contain facts sufficient to state a claim upon which
12 relief can be granted.

13 SECOND AFFIRMATIVE DEFENSE

14 As a second and separate affirmative defense, CCA alleges that Plaintiffs lack standing to
15 bring this complaint.

16 THIRD AFFIRMATIVE DEFENSE

17 As a third and separate affirmative defense, CCA alleges Venue is not proper in the
18 Northern District.

19 FOURTH AFFIRMATIVE DEFENSE

20 As a fourth and separate affirmative defense, CCA alleges that pursuant to Federal Rules
21 of Civil Procedure 12(b)(7), Plaintiffs failed to join as indispensable parties.

22 FIFTH AFFIRMATIVE DEFENSE

23 As and for a Fifth Affirmative Defense, USFS's application of the CEs to the Subject
24 Allotments was a reasonable exercise of its discretionary power pursuant to the 2005 and 2008
25 Appropriations Riders, an authority delegated to USFS by Congress. Therefore, the USFS did
26 not act arbitrarily, capriciously, or contrary to these statutes. [*Chevron USA v. Natural Resources*
27 *Defense Council*, 467 U.S. 837 (1984).]
28

SIXTH AFFIRMATIVE DEFENSE

As and for a Sixth Affirmative Defense, Friant Defendants allege that Plaintiffs have failed to exhaust their administrative remedies.

SEVENTH AFFIRMATIVE DEFENSE

As a Seventh Affirmative Defense, CCA alleges that the relief sought by Plaintiffs is inconsistent with clear Congressional directives regarding the expedited re-issuance of grazing permits.

WHEREFORE, Intervenor-Defendant CALIFORNIA CATTLEMEN'S ASSOCIATION respectfully requests that this Court deny the Plaintiffs any relief whatsoever, that it entered judgment against Plaintiffs on all claims, and that this Court award Intervenor-Defendant CALIFORNIA CATTLEMEN'S ASSOCIATION their costs and such other further relief as the Court may deem just and proper.

Dated: June 11, 2008

BEST BEST & KRIEGER LLP

By: /s/ William J. Thomas, Jr.
William J. Thomas, Jr.
Heather C. Baugh
Attorneys for Intervenor
California Cattlemen's Association

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9 Attorneys for Intervenor
10 California Cattlemen's Association

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

14 WESTERN WATERSHEDS PROJECT, *et*
15 *al.*,

16 Plaintiffs,

17 v.

18 UNITED STATES FOREST SERVICE,

19 Defendants.

20 CALIFORNIA CATTLEMEN'S
21 ASSOCIATION,

22 Intervenor.

Case No. 08-CV-1460 PJH

[PROPOSED] ORDER GRANTING
CALIFORNIA CATTLEMEN'S
ASSOCIATION'S MOTION TO INTERVENE

[Filed concurrently with:

1. Notice of Motion and Motion to Intervene;
2. Memorandum of Points and Authorities;
3. [Proposed] Answer in Intervention;
4. Declaration of Justin Oldfield; and

Date: July 23, 2008

Time: 9:00 a.m.

Ctrm: 3

Judge: Honorable Phyllis J. Hamilton

Complaint filed: May 30, 2008

[PROPOSED] ORDER

Upon review of Proposed Intervenor-Defendant California Cattlemen's Association's ("CCA") Motion for Leave to Intervene; the Memorandum of Points and Authorities filed herein; the Declaration of Jason Oldfield; the Request for Judicial Notice; and upon hearing the arguments of counsel, and good cause appearing to the satisfaction of the Court therefrom:

IT IS HEREBY ORDERED THAT the California Cattleman's Association is hereby granted leave to intervene in this action, and to file an Answer to Plaintiff's First Amended Complaint.

Dated: _____

JUDGE, UNITED STATES DISTRICT COURT
NORTHERN DISTRICT